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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4261 OF 1995

Poona Shims Pvt. Ltd. ... Petitioner

V/s

B.P. Ramaiah, The Regional Provident Fund Commissioner & anr. ... Respondents

Mr. K.S. Bapat for the petitioner.

Mr. Suresh Kumar for respondent Nos. 1 & 2.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 28TH NOVEMBER, 2006.

ORAL JUDGMENT:

1. The petitioner has challenged the order of the Regional Provident Fund Commissioner passed under Sec.14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). This order dated 30.6.1995 requires the petitioner to pay damages amounting to Rs.5,47,911/- for delay in making the payment of contributions towards the Provident Fund Scheme.

2. The petitioner was established as a new unit and

started its commercial and production activities on 1.7.1981. It had an employees' strength of 50. The petitioner was entitled to the infancy protection of 5 years available to a new establishment under the provisions of the Act. An application was made by the petitioner on 25.2.1984 for voluntary coverage of their establishment under Section 1(4) of the Act. The respondent Commissioner directed the petitioner by letter dated 16.4.1984 to submit certain additional documents and further information. The petitioner supplied the requisite information and documents. However, the Commissioner did not take any action in the matter. No code number was allotted to the petitioner's establishment. Several reminders went unheeded by the respondent. The petitioner therefore started making deductions of the provident fund amount from the employees' salary and deposited the same with the State Bank of India, together with the matching contribution of the employer. This remittance was started regularly by the petitioner from March, 1986 since the respondent had not paid any heed to the petitioner's request for voluntary coverage.

3. When the infancy protection period came to an end on 1.7.1986, the petitioner again requested the respondent to allot a code number to it for remitting the provident

fund contribution. An inspector was deputed to visit the petitioner's establishment on 24.3.1987. After conducting the inspection, a letter was issued by the respondent on 14.5.1987 allotting a sub-code number to the petitioner, clubbing the petitioner's establishment with M/s. Poona Pressings Pvt. Ltd. Immediately by letter dated 9.6.1987, the petitioner raised an objection to this clubbing of the two establishments and sought an independent code number for making the necessary contribution. Several reminders and representations were sent to the respondent by the petitioner thereafter upto February, 1993 for being allotted a separate code number. No enquiry under Section 7-A of the Act was conducted by the respondent.

4. Despite all the efforts made by the petitioner to have its establishment covered voluntarily and then to obtain a separate code number after the infancy period was over, the respondent did not react or respond in the matter. A legal notice sent on 8.2.1990 calling upon the respondent to furnish a separate and independent code number to the petitioner's establishment met with the same fate. However, these efforts of the petitioner fructified only after their letter dated 2.2.1993. On 27.7.1993 a separate and independent code number was issued to the petitioner making it applicable with

effect from 31.3.1986. Immediately, the petitioner remitted the entire amount which was deposited in the sub-account with the State Bank of India.

5. The Regional Provident Fund Commissioner's office, however, thereafter issued a notice to the petitioner under Section 14-B of the Act levying damages for the alleged defaults in remitting the contributions from April, 1986 to June, 1994. The Regional Provident Fund Commissioner has, in exercise of the powers conferred under Section 14-B of the Act, rejected the contentions raised by the petitioner in its reply dated 13.1.1995 and has levied damages for delayed payment of contributions to the Provident Fund Scheme from April, 1986 to July, 1993.

6. In my opinion, this action of the respondent smacks of malafides and demonstrates the high handedness of the respondent. The petitioner had been continuously seeking a code number from the Commissioner so that the deposits of the provident fund contributions could be made with the Scheme. However, the Provident Fund authorities chose to ignore the requests made by the petitioner. Although the petitioner is entitled to avail of the infancy protection available under Section 16 of the Act, the petitioner sought to voluntarily

cover its establishment right from 1984 i.e. three years after it was set up. Requests made to the Commissioner to allot a code number from time to time went unheeded. Even thereafter, though the establishment was in existence for five years and the Act and the Scheme were compulsorily applicable to the petitioner's establishment, the code number was not allotted by the provident fund authorities, ignoring the requests of the petitioner. In 1987, the authorities decided to club two establishments and allot the petitioner a sub-code number. The petitioner was not told the basis of such clubbing nor was any enquiry held under Section 7-A of the Act prior to the clubbing of these establishments. The Provident Fund authorities have clubbed the establishments together without any material on record indicating the nexus between the two establishments. It was only in 1993 that the authorities decided to pay heed to the petitioner's requests for allotment of a separate code number. Obviously, therefore, the entire attitude of the Provident Fund authorities indicates the lethargy with which they acted in response to the petitioner's requests. The respondents have attempted to cover up their inaction in the matter by levying damages under Section 14-B of the Act.

7. In a similar case between **Abhijat Samayadarshika Maharashtra Ltd. v/s Union of India & ors., reported in 1995 I C.L.R. 655,** a Division Bench of this Court has observed that, it would be difficult to appreciate how the department could absolve itself from its responsibilities and find fault with the petitioner's company for not depositing the provident fund dues. In fact the Division Bench had observed in para 12 thus -

> "12. We would not like the matter to rest here. The facts of the case are rather startling and we cannot be unmindful of the fact that in the whole process because of the fault on the part of the office of the Regional Provident Fund Commissioner, the employees of the petitioner company sustained loss in the form of loss of interest. As we have found that it was not the petitioner company but in fact the office of the Regional Provident Fund Commissioner, which was responsible, we direct that the Provident Fund Commissioner will inquire into the matter and also take steps to recover the same from the officer responsible for the same placing the responsibility on the concerned officer."

8. In my opinion, the Provident Fund authorities cannot seek to levy damages for defaults which have occurred for their own lapses. Had the code number been allotted to the petitioner immediately after the infancy period was complete, the petitioner would have deposited and remitted the provident fund contribution to the Scheme. Not having done so, the Provident Fund authorities cannot levy damages for their own negligence.

9. The learned advocate for the respondent places reliance on the judgment of the Supreme Court in **Halwasia Vidya vihar (Sr. Sec. School) Haryana v/s Regional Provident Fund Commissioner, reported in (2006) 4 SCC 46.** The appellant in that case contributed the provident fund to the State Government instead of sending it to the Provident Fund authorities, although the Provident Fund Scheme was adopted by the appellant w.e.f. 1.7.1993. The Supreme Court held that these remittances ought to have been made to the Provident Fund Scheme and not to the State Government as was done by the appellant. This judgment is not applicable to the facts and circumstances of the present case. In the present case, the Provident Fund Commissioner chose not to allot an independent code number to the petitioner. Therefore, despite the petitioner’s desire to contribute the remittances to the Scheme, it could not do so

because no code number was allotted. It is difficult to appreciate the argument advanced on behalf of the respondent that the petitioner ought to have deposited the amount using the sub-code number which was allotted. When the petitioner had sought time and again a separate code number, it was expected that the respondent would atleast give a hearing to the petitioner and pass an order regarding the clubbing of the two establishments. No such order was passed before the sub-code number was allotted. The argument of the Provident Fund authorities that in any case remittances should have been deposited, also cannot be accepted. This is because there would have been no definite account into which the deposits could have been made and interest earned on these amounts would not have been credited to the benefit of the petitioner's employees. That being the position, in my opinion, the order under Section 14-B is unsustainable. The provision under Section 14-B being penal in nature, it was all the more necessary for the respondents to exercise caution before levying damages.

10. Petition allowed. Rule made absolute in terms of prayer clause (a).

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